

WILLIAM H. DE GROOT.

[To accompany Joint Resolution H. R. No. 17.]

MARCH 19, 1860.

Mr. BURNETT, from the Committee for the District of Columbia, made the following

REPORT.

*The Committee for the District of Columbia, to whom was referred the memorial of William H. De Groot, praying to be indemnified for his losses and damages, and to have refunded to him the amount of his expenditures (less the amount paid to him by the government) incurred by him as the assignee of the contract for furnishing brick for the Washington aqueduct, report :*

That they have examined the claim of the memorialist and the evidence adduced in its support.

It appears that on the 23d of January, 1854, William H. Deggs and Francis H. Smith entered into a contract with Montgomery C. Meigs, acting for and on behalf of the United States, by which they agreed to furnish the latter with not more than forty million nor less than twenty-five million of bricks, at the rate of \$8 75 per thousand, to be used in building the Washington aqueduct. For the faithful performance of the contract by Deggs & Smith, Columbus Alexander and Alexander H. Mechlin became sureties. Deggs & Smith failed in the performance of their contract and Mechlin and Alexander undertook to carry it out in their stead. The substitution of Mechlin & Alexander for Deggs & Smith having been accepted by the United States, they became the legal parties to the contract which was subsequently prosecuted in their names.

On the 9th of May, 1855, an agreement was concluded between William H. De Groot, the memorialist, and Mechlin & Alexander, by which the former undertook the execution of the contract on the same terms and conditions, in all respects, as it had been originally undertaken by Deggs & Smith; the memorialist receiving, at the same time, a power of attorney from Mechlin & Alexander, authorizing him to do and perform everything required by the contract. He was to receive payment for the brick delivered, and to act in all respects in their stead, as fully as if he had been the legal party to the contract. All this was done with the knowledge and consent of Captain

Meigs, the agent of the United States, who always thereafter treated with the memorialist on the same footing as if he had been the original contractor.

In pursuance of the agreement with Mechlin & Alexander, the memorialist applied himself immediately to prepare for the execution of the contract, by purchasing land for clay and wood; machines for moulding brick; boats, carts, wagons; horses and mules for transporting them; building extensive houses for the accommodation of the workmen; kilns, sheds and roads; making yards, providing tools, hiring hands, and doing everything necessary to enable him to prosecute the work in a manner satisfactory to the government. It also appears that Deggs & Smith, the original contractors, having failed to furnish any brick, or to provide in any way for the execution of their contract, it became necessary for the memorialist to furnish a considerable number before it was practicable to manufacture them himself, in order that the work might not be delayed. This he did without murmuring, though at the loss of all the profits which he would have realized had he been permitted to wait until he could manufacture them himself.

It appears from the evidence furnished to the committee that a kiln of 300,000 brick, made after he had completed his arrangements for the prosecution of his contract, cost, when delivered on the line of the work, \$1,575, and that these brick were worth, at the contract price, \$2,625; showing a profit to the contractor exceeding \$3 50 per thousand.

It also appears from the testimony that, in the purchase of land, wood, boats, wagons, horses, machinery, and tools; building houses and brick kilns; in making yards, roads, &c., preparatory to the execution of his contract, and in the purchase and transportation of brick which his predecessors had failed to provide for, the memorialist had expended the sum of \$67,987 18, and that he was prepared to prosecute the work which he had undertaken as rapidly, and even more rapidly, than was required by the government superintendent; and that his profits would not only have been remunerative, but large and likely to increase, as the operations at the yard and in the transportation of the brick became more systematic.

At this period, about the first of October, 1855, the memorialist, as has been shown, was fully prepared to proceed in the execution of his contract, (everything having been provided to enable him to do so to the best advantage for his own interest as well as to the satisfaction of the government,) and continued to perform the same until the contract was virtually terminated by the United States, through the refusal of Congress to make any further appropriation for carrying on the work, and no complaint was made in relation to the manner in which the contract was performed by the memorialist.

That the contract of the memorialist had been executed with fidelity and to the entire satisfaction of the government is shown by the report of Captain Meigs of the 11th of April, 1856. In this he says of the contractors, De Groot & Darling: "They are waiting orders, and they do not know whether they should make 100,000 or 15,000,000 of bricks for the season's use."

As further proof of the faithful and satisfactory performance of the

contract of the memorialist, it appears that at the time the work was stopped by the government there were 418,544 brick unused on the line of the work, and 300,000 in the kilns ready for delivery. But there is, however, no allegation of any default or failure on the part of the memorialist in the manner in which his contract was executed. On the contrary, it appears that the moment the contract was assigned to him by Mechlin & Alexander he set vigorously to work to prepare for its execution, and that at the time it was terminated by the government he was prepared to prosecute it in the most approved and systematic manner. He was provided with everything necessary—with land for clay, with steam engines, machines for moulding, kilns for burning, yards for drying, houses for the accommodation of the workmen, roads, boats, carts, wagons, and animals for transportation, workmen—in short, with everything necessary to enable him to afford satisfaction to the government and to make his contract profitable to himself.

The further prosecution of the contract was ended by the failure of Congress to make an appropriation to carry on the work, and the large, expensive, and necessary preparations made by the memorialist for prosecuting the contract were rendered abortive, and the property thrown upon his hands before he had realized any profit.

*“Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury shall settle and adjust with all the parties respectively interested therein, on principles of justice and equity, all damages, losses, and liabilities incurred or sustained by said parties, respectively, on account of their contract for manufacturing brick for the Washington aqueduct; and he is hereby directed to pay the amount found due by such settlement and adjustment out of the appropriation made for paying the liabilities for the said aqueduct by the act making appropriations for certain civil expenses of the government for the year ending June thirtieth, eighteen hundred and fifty-seven, approved the eighteenth of August, eighteen hundred and fifty-six: Provided, That the said parties first surrender to the United States all the brick made, together with all the machinery and appliances, and other personal property prepared for executing the said contract, and that the said contract be cancelled.*

*“Approved March 3, 1857.”*

The memorialist, under said resolution, surrendered to the United States all the brick then made, together with all the machinery, appliances, and property therein referred to, under the supposition that he would be fully indemnified under said resolution.

At the time the contract was stopped the whole amount of expenditures of the memorialist, as appears from the proved vouchers which accompany his petition, was, exclusive of interest, his own time, and the sum paid to his temporary partner, D. S. Darling, \$67,987 18 the amount received by him \$18,074 85. He subsequently received the sum of \$7,576, out of the amount awarded by the Secretary of the Treasury to Mechlin & Alexander, under the joint resolution of the 3d March, 1857.

Thus it appears that, without reference to loss of time, profits, and

damages, and independent of the sum paid to his temporary partner, who reassigned to the memorialist the whole of his interest in the contract, and the numerous personal and other expenses inseparable from the prosecution of the contract in the first place, and his claim for indemnity in the second, the memorialist has expended in money, over and above the amount received, the sum of \$42,336 33.

The committee are not unaware that, by the original agreement, the contractor was to take the risk of a failure of appropriation. But it will hardly be contended, even if the question of a right to indemnity on the part of the memorialist had not been settled by the act of August 18, 1856, and the joint resolution of March 3, 1857, that the government, after contracting with the memorialist for so large a supply of brick, and requiring him to prepare for the execution of his contract in such a manner as to be able to make and deliver 60,000 brick a day, involving an expenditure of over \$60,000 before a single brick could be made and delivered under the contract, might, through caprice or whim, without some overruling necessity, stop the work to the ruin of the contractor. It could never have been the intention of the parties that the government might wantonly stop the work contemplated by the contract, after inducing the contractor to prepare for its execution by the expenditure of large outlays of money. Such a construction would be totally repugnant to every principle of equity and justice. The true construction of the contract undoubtedly is, that any accidental failure of appropriation should be at the risk of the contractor. But it was never intended that after the memorialist had incurred an expense of many thousands of dollars in preparing to execute the contract in a manner commensurate with the views and instructions of its superintendent, the government should terminate it without excuse, and afterwards taking possession of the property and improvements of the contractor without fully indemnifying him both for his outlays and loss of profits. Anything short of this would be unjust.

But the question of right on the part of the memorialist to full indemnity the committee understand to have been settled by the joint resolution of March 3, 1857. That resolution, as will be observed, directs "that the Secretary of the Treasury shall settle and adjust with *all the parties respectively interested* therein, on principles of justice and equity, *all damages, losses and liabilities* incurred or sustained by said parties, respectively, on account of the contract for manufacturing brick for the Washington aqueduct." Nothing can be broader or more explicit than this resolution. It provides that all the parties *interested* in the contract shall be settled with; not merely the *legal* parties, but the parties *interested* in and "on account" of the contract. This language could have been used for no other purpose than to give to the equitable party, or party to whom the contract has been assigned, a right to his proper share of the indemnity, provided, as Congress supposed, by the resolution. In other words, it was to give to the memorialist a legal claim to such "damages, losses, and liabilities" as he had "incurred or sustained *on account* of the said contract."

By directing the Secretary to settle and adjust "the damages, losses,



and liabilities'' incurred or sustained by the parties respectively, Congress intended, as the committee believe, to indemnify the memorialist, and all others who had sustained injury, against all losses, whether arising from the actual expenditure of money, deprivation of profits, or damages which they might have sustained in their business, or by reason of having their property and improvements thrown upon their hands. The words "damages, losses, and liabilities," as well by ordinary import as by judicial interpretation, imply that the party who is to be settled with on account of having incurred or sustained them shall have the amplest satisfaction. These words embrace unsatisfied expenditures, damages and profits; and under a proper construction of the resolution the Secretary of the Treasury would have allowed the memorialist not only for the amount of his expenditures, over and above his receipts, but also such fair profits as the contract would have yielded, together with the damages he may have sustained by the interruption of his business, &c. The language of the resolution is susceptible of no other meaning.

But from the report of the Secretary, or rather his award made in pursuance of the joint resolution, it appears that the memorialist was allowed neither expenditures, profits, nor damages. He was excluded on the ground that he was not a legal party to the contract, and could not therefore be recognized as one of the parties who had a right to claim under the joint resolution. The memorialist was not a party to the original contract, but was accepted by the agent of the government as the assignee, and was thus a *legal* party under *the resolution*, and had a just claim to indemnity under it.

Having once decided that the memorialist had no right to indemnity under the resolution, his decision, judging from the evidence before the committee, was entirely correct; for neither Deggs & Smith, nor Mechlin & Alexander, sustained any damage, loss, or liabilities which the government was bound to make good. Deggs & Smith never suffered any interruption in the performance of their contract. Indeed, there is no evidence that they ever attempted to execute it. Mechlin and Alexander were mere sureties for the faithful performance of the contract of Deggs and Smith; but they assigned it to De Groot, the memorialist, and never incurred any liability, nor sustained any loss, and could not, therefore, justly claim an allowance for losses, liabilities or damages under the resolution.

It seems that a Mr. Kellogg presented a claim, arising after the work had been virtually stopped, and received a portion of the sum awarded by the Secretary of the Treasury under the resolution of March 3, 1857; but inasmuch as there is no connexion between him and the present claimant, the committee have not thought it necessary to inquire further than to ascertain that fact.

But the position of the memorialist is different from that of the parties to whom reference has been made. He became a party to the contract at a period long anterior to the stoppage of the work; he expended, as appears, large sums in the purchase of land, engines, machinery, wood, and all the necessary apparatus and fixtures for carrying on the contract; he built houses and brick kilns, made yards, roads, and other improvements, and did everything required to enable

him to execute his contract with promptitude and despatch. After having done all this, at a large expenditure of money, and having proved his ability to carry out his contract in a manner satisfactory to the government and profitable to himself, the work was stopped, not through any default of his, but by the order of the superintendent. Under such circumstances can it be pretended that he was not entitled to indemnity, and to such an indemnity as would embrace not only the expenditures he had made, but likewise damages sustained?

From this review of the case of the memorialist it would seem that recognized principles of equity and justice require that these amounts should be refunded to him; and these principles are powerfully sustained by the facts that all the property and improvements purchased and provided by the memorialist, at the expense of this large outlay of money, now belong to the government, having been conveyed to it in pursuance of the joint resolution of March 3, 1857. The government cannot take the memorialist's property and enjoy the fruits of his labor without fully indemnifying him therefor.

But this is not all. The memorialist has as much right in equity and justice to damages for his losses, and satisfaction for the benefit which he would naturally have derived from his property and labor, as to compensation for his actual expenditures. The committee regard this as a well established principle of law and equity. The joint resolution of March 3, 1857, intended to provide for a full indemnity, but the Secretary of the Treasury having construed it otherwise, the committee recommend the passage of a joint resolution to meet the prayer of the memorialist for such expenditures as he has made in the fair prosecution of his contract, over and above the amount he has received, and also for the damages he has sustained. The committee have refrained from fixing the amount, and submit the decision in relation thereto to the Secretary of War.



